FILE COPY

Supreme Court of the United States

October Term, 1950

No. 487

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

INDEX

	PAGE
Opinions below	1
Jurisdiction	1
Questions Presented	2
Statutory Provisions Involved	2
Statement	3
How the Federal Questions were Raised	6
Reasons for Granting the Writ	7
Conclusion	10
Appendix A—Opinion below	A1
Appendix B—Judgment below	A7

AUTHORITIES

Cases:

Bowser v. *State*, 136 Md. 342, 110 A 854	7
Davids v. *State*, 208 Md. 377, 118 A2d 636	7
Elkins v. *United States*, 364 U.S. 206	10
Henry v. *United States*, 361 U.S. 98	7
Wolf v. *Colorado*, 338 U.S. 25	7, 8, 10

Constitutional Provisions:

Constitution of the United States, Fourteenth Amendment	2, 7, 10

Statutes:

28 U.S.C. section 1257 (3)	2
Annotated Code of Maryland (1957) Article 27 section 490	2, 5, 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. .....

CHARLES ISAACS,

Petitioner

vs.

STATE OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

CHARLES ISAACS, your petitioner, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland, entered in the above-entitled case on April 12, 1960.

OPINION BELOW

The opinion of the Court of Appeals of Maryland (*infra*, Appendix A, pp. A1-A6) is reported at 223 Md. —— and at 159 A2d 636.

JURISDICTION

1. The judgment of the Maryland Court of Appeals (*infra*, Appendix B, p. A7) was entered on April 12, 1960. A timely petition for rehearing was denied on May 19, 1960. On August 18, 1960, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to and including October 15, 1960.

2. The federal questions were raised as indicated at p. 6, *infra*.

3. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. section 1257 (3).

QUESTIONS PRESENTED

1. Whether the city police officer's arrest of the petitioner for an alleged misdemeanor not committed in his presence or view, upon mere suspicion, and without a warrant, was illegal as violative of the petitioner's rights under the Fourteenth Amendment to the Constitution of the United States.

2. Whether the search and seizure by city police officers pursuant to a search warrant based upon and flowing from the foregoing arrest was unlawful as violative of the petitioner's rights under the Fourteenth Amendment to the Constitution of the United States.

3. Whether the evidence obtained by the unlawful search and seizure by city police officers was inadmissible as evidence at the trial of the petitioner, as violative of the petitioner's rights under the Fourteenth Amendment to the Constitution of the United States.

STATUTORY PROVISIONS INVOLVED

The provision of the Annotated Code of Maryland (1957) under which the petitioner was indicted, tried and convicted reads as follows: Article 27, Section 490. Persons deemed rogues and vagabonds.

If any person shall be apprehended having upon him any picklock, key, crow, jack, bit, or other implement, at places and under circumstances from which an intent may be presumed feloniously to break and enter into any dwelling house, warehouse, storehouse, stable or outhouse, or shall have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon, also at places and under

circumstances from which may be presumed an intent feloniously to assault any person, or shall be found in or upon any dwelling house, warehouse, storehouse, stable or outhouse, or in any enclosed yard or garden or area belonging to any house, with an intent to steal any goods or chattels, every such person shall be deemed a rogue and vagabond, and on being convicted thereof shall be sentenced to the penitentiary for not less than one month nor more than two years, or to imprisonment in jail, at the discretion of the court, for a like term.

STATEMENT

The evidence adduced at the trial reveals the following: At about 10:00 p.m., on August 27, 1959, in Cumberland, Maryland, Officer Gibson of the Cumberland Police, saw two unidentified men about 300 feet away from him walking along the street towards a blind alley in the rear of the Montgomery Ward warehouse. The police officer entering the alley from its blind end, saw the defendant, Wright, standing in the alley near the loading dock of the warehouse. (R. 12) The officer approached Wright and asked for his identity and purpose and not being satisfied with his answers, took him to the police call box. (R. 13) At this time, the police officer saw another man standing under a lighted sign across the street opposite the entrance to the alley who appeared to move toward a telephone pole. (R. 13)

Officer Gibson telephoned for another policeman to take Wright to the police station "for investigation", (R. 14) and Officer Clayton responded. Officer Gibson then gave Officer Clayton a description of the man he had seen near the lighted sign across the street. (R. 15) Officer Gibson then returned to the loading dock of the warehouse and found some evidence that an attempt had been made to enter the warehouse door by someone. (R. 14-15)

Officer Clayton, after leaving Wright at the police station, cruised around and picked up the petitioner and one Forkes who were standing on the sidewalk to the rear of a 1959 Ford talking to each other. (R. 34-35) The petitioner was identified by Officer Gibson as the man he had seen earlier across the street from the entrance to the blind alley. (R. 15)

Across the street, there was parked an Oldsmobile automobile later identified as being registered in the name of the petitioner's wife. (R. 36) All three defendants indicated they were from Kentucky and the two automobiles above mentioned bore Kentucky registration plates. (R. 35, 37 and 14) At the police station, the petitioner admitted that the Oldsmobile was his car registered in the name of his wife. (R. 36) The Ford automobile was not shown to belong to any of the three men (R. 51), and the only connection between that automobile and the petitioner was that he was apprehended by the police while standing near it talking to Forkes. The Ford car was connected to Wright only by the fact that an unmailed letter addressed to Wright's wife was found in its glove compartment. (R. 58-59)

Forkes, according to his statement to the police did not know petitioner except that the latter had agreed to give Forkes a ride to Ohio. (R. 47) Wright disclaimed any acquaintance with the other two men, (R. 47) and the petitioner and Forkes claimed they did not know Wright. (R. 40) No witness indicated that petitioner and Forkes were ever in the company of Wright and, in fact, Officer Gibson did not see petitioner until he walked Wright out of the alley on the way to the police call box. (R. 28)

Officer Gibson said that petitioner did not run, did not walk away and did not do anything wrong in his presence and he knew of no connection between Wright and petitioner (R. 29) and had no reason to inquire of Wright concerning petitioner. (R. 30) Officer Clayton, who ar-

rested petitioner on identification furnished by Officer Gibson, said that he did not see petitioner doing anything wrong in his presence and that he did not see him violating any law. (R. 38) A witness who saw petitioner and Forkes in the vicinity of the Oldsmobile about 45 minutes earlier and on the sidewalk to the rear of the Ford at the time of the arrest and for a short period earlier did not see petitioner or the other man do anything wrong. (R. 44)

The petitioner and the other defendants were interrogated by the police but never given any warning of their constitutional rights. (R. 50)

Based upon the information obtained from interrogating the defendants following the arrest, and no other information than here stated, the defendants were charged on the morning of August 28, 1959; (R. 67) and, at 4 p.m. on that day, a search warrant (R. 7-8) was obtained to search the Ford automobile. (R. 67-68) Pursuant to the search warrant a search of the Ford automobile was made, (R. 52-53) and its locked trunk compartment was found to contain burglar's tools. (R. 57) There was no evidence to show to whom the burglar's tools belonged (R. 62) and no evidence to show that the petitioner had any knowledge concerning them (R. 63) and no attempt was made to connect the Ford automobile with any of the men, (R. 63-64) and particularly petitioner, other than the fact that petitioner, with Forkes, was arrested standing near it and that all the parties were from the State of Kentucky in which state this automobile was registered.

The petitioner was tried at a common trial with Wright and Forkes, in the Circuit Court for Allegany County on a three count indictment charging them with: (first count) Conspiracy to break and enter; (second count) attempting to break and enter; and (third count) with being "rogues and vagabonds" under the Code of Maryland (1957) Article 27, Section 490. (R. 9-10). Prior motions